

no evidence in opposition to it, the amount found due by the settlement, and the sum which would be due upon the hypothesis assumed, would not materially differ.

Upon the whole, I do not think this is one of those cases of mistake made apparent by satisfactory evidence, which will justify this court, not only in setting aside the settlement actually made, but in making a new one, and then in decreeing the specific execution of such new one. The difference in the amount due from the defendant, according to the principles of settlement which are adopted, as appears by the accounts reported under the order of the 5th of November last, is very material. According to one view, the amount exceeds the sum for which the defendant gave his note, nearly twelve hundred dollars, and according to the other nearly two thousand dollars. It is exceedingly probable, if a settlement upon the principles, and with the results now insisted upon by the complainant, had been urged and insisted upon at that time, that no compromise would have been made, but the defendant would have preferred to have contested the questions in issue between him and the complainant in the original case, to do which, it is very certain abundant scope was given him by the opinion of the Court of Appeals in the case referred to.

Since the date of the order of November, 1847, evidence has been filed that the note given by defendant upon the settlement, was sued at law and a judgment obtained upon it at April term 1846, of the Prince George's County Court, upon which a *fiery facias* issued, which is still outstanding. Now it seems to me that the complainant should not be permitted thus to pursue his remedies in both courts, seeking to secure a part of his claim in one and a part in another. If he comes here to reform, and enforce the agreement as reformed, he must recover all or none, and cannot be allowed to split up his demand and recover a part at law, and a part in equity.

There is another difficulty in the way of the plaintiff. It appears by the petition of George Stewart, as the executor of William Stewart, filed in this cause on the 22d of January, 1846, and an exhibit filed therewith, that the complainant, Hall,